

ASSEMBLY BILL

No. 2302

Introduced by Committee on Insurance (Solorio (Chair), Hagman (Vice Chair), Bradford, Carter, Feuer, Hayashi, Olsen, Skinner, Torres, and Wieckowski)

February 24, 2012

An act to repeal Sections 77.7, 127.6, and 138.65 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2302, as introduced, Committee on Insurance. Workers' compensation: studies.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law requires the Commission on Health and Safety and Workers' Compensation to undertake a specified study examining the causes of the number of insolvencies among workers' compensation insurers between the calendar years of 1998 and 2008, to be conducted by an independent research organization, and requires the commission and the Department of Industrial Relations, no later than July 1, 2009, to publish the report of the study on its Internet Web site and to inform the Legislature and the Governor of the availability of the report.

Existing law requires the administrative director to begin a study, on or before July 1, 2003, of medical treatment provided to workers who have sustained industrial injuries and illnesses, and to report and make recommendations, based on the results of the study, to the Legislature, on or before July 1, 2004.

Existing law requires the administrative director, after consultation with the Insurance Commissioner, to contract with a qualified organization to study the effects of the 2003 and 2004 legislative reforms on workers' compensation insurance rates, and requires the administrative director to submit the final study on or before January 1, 2006.

This bill would repeal these workers' compensation study requirements.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 77.7 of the Labor Code is repealed.
2 ~~77.7. (a) A study shall be undertaken to examine the causes~~
3 ~~of the number of insolvencies among workers' compensation~~
4 ~~insurers within the past 10 years. The study shall be conducted by~~
5 ~~an independent research organization under the direction of the~~
6 ~~commission. Not later than July 1, 2009, the commission and the~~
7 ~~department shall publish the report of the study on its Internet Web~~
8 ~~site and shall inform the Legislature and the Governor of the~~
9 ~~availability of the report.~~
10 ~~(b) The study shall include an analysis of the following: the~~
11 ~~access to capital for workers' compensation insurance from all~~
12 ~~sources between 1993 and 2003; the availability, source, and risk~~
13 ~~assumed of reinsurers during this period; the use of deductible~~
14 ~~policies and their effect on solvency regulation; market activities~~
15 ~~by insurers and producers that affected market concentration;~~
16 ~~activities, including financial oversight of insurers, by insurance~~
17 ~~regulators and the National Association of Insurance~~
18 ~~Commissioners during this period; the quality of data reporting to~~
19 ~~the commissioner's designated statistical agent and the accuracy~~
20 ~~of recommendations provided by the commissioner's designated~~
21 ~~statistical agent during this period of time; and underwriting, claims~~
22 ~~adjusting, and reserving practices of insolvent insurers. The study~~
23 ~~shall also include a survey of reports of other state agencies~~
24 ~~analyzing the insurance market response to rising system costs~~
25 ~~within the applicable time period.~~
26 ~~(c) Data reasonably required for the study shall be made~~
27 ~~available by the California Insurance Guarantee Association,~~

1 ~~Workers' Compensation Insurance Rating Bureau, third-party~~
2 ~~administrators for the insolvent insurers, whether prior to or after~~
3 ~~the insolvency, the State Compensation Insurance Fund, and the~~
4 ~~Department of Insurance. The commission shall also include a~~
5 ~~survey of reports by the commission and other state agencies~~
6 ~~analyzing the insurance market response to rising system costs~~
7 ~~within the applicable period of time.~~

8 ~~(d) The cost of the study is not to exceed one million dollars~~
9 ~~(\$1,000,000). Confidential information identifiable to a natural~~
10 ~~person or insurance company held by an agency, organization,~~
11 ~~association, or other person or entity shall be released to researchers~~
12 ~~upon satisfactory agreement to maintain confidentiality.~~
13 ~~Information or material that is not subject to subpoena from the~~
14 ~~agency, organization, association, or other person or entity shall~~
15 ~~not be subject to subpoena from the commission or the contracted~~
16 ~~research organization.~~

17 ~~(e) The costs of the study shall be borne one-half by the~~
18 ~~commission from funds derived from the Workers' Compensation~~
19 ~~Administration Revolving Fund and one-half by insurers from~~
20 ~~assessments allocated to each insurer based on the insurer's~~
21 ~~proportionate share of the market as shown by the Market Share~~
22 ~~Report for Calendar Year 2006 published by the Department of~~
23 ~~Insurance.~~

24 ~~(f) In order to protect individual company trade secrets, this~~
25 ~~study shall not lead to the disclosure of, either directly or indirectly,~~
26 ~~the business practices of a company that provides data pursuant~~
27 ~~to this section. This prohibition shall not apply to insurance~~
28 ~~companies that have been ordered by a court of competent~~
29 ~~jurisdiction to be placed in liquidation under the supervision of a~~
30 ~~liquidator or other authority.~~

31 SEC. 2. Section 127.6 of the Labor Code is repealed.

32 ~~127.6. (a) The administrative director shall, in consultation~~
33 ~~with the Commission on Health and Safety and Workers'~~
34 ~~Compensation, other state agencies, and researchers and research~~
35 ~~institutions with expertise in health care delivery and occupational~~
36 ~~health care service, conduct a study of medical treatment provided~~
37 ~~to workers who have sustained industrial injuries and illnesses.~~
38 ~~The study shall focus on, but not be limited to, all of the following:~~

1 ~~(1) Factors contributing to the rising costs and utilization of~~
2 ~~medical treatment and case management in the workers'~~
3 ~~compensation system.~~

4 ~~(2) An evaluation of case management procedures that contribute~~
5 ~~to or achieve early and sustained return to work within the~~
6 ~~employee's temporary and permanent work restrictions.~~

7 ~~(3) Performance measures for medical services that reflect~~
8 ~~patient outcomes.~~

9 ~~(4) Physician utilization, quality of care, and outcome~~
10 ~~measurement data.~~

11 ~~(5) Patient satisfaction.~~

12 ~~(b) The administrative director shall begin the study on or before~~
13 ~~July 1, 2003, and shall report and make recommendations to the~~
14 ~~Legislature based on the results of the study on or before July 1,~~
15 ~~2004.~~

16 ~~(c) In implementing this section, the administrative director~~
17 ~~shall ensure the confidentiality and protection of patient-specific~~
18 ~~data.~~

19 SEC. 3. Section 138.65 of the Labor Code is repealed.

20 ~~138.65. (a) The administrative director, after consultation with~~
21 ~~the Insurance Commissioner, shall contract with a qualified~~
22 ~~organization to study the effects of the 2003 and 2004 legislative~~
23 ~~reforms on workers' compensation insurance rates. The study shall~~
24 ~~do, but not be limited to, all of the following:~~

25 ~~(1) Identify and quantify the savings generated by the reforms.~~

26 ~~(2) Review workers' compensation insurance rates to determine~~
27 ~~the extent to which the reform savings were reflected in rates.~~
28 ~~When reviewing the rates, consideration shall be given to an~~
29 ~~insurer's premium revenue, claim costs, and surplus levels.~~

30 ~~(3) Assess the effect of the reform savings on replenishing~~
31 ~~surpluses for workers' compensation insurance coverage.~~

32 ~~(4) Review the effects of the reforms on the workers'~~
33 ~~compensation insurance rates, marketplace, and competition.~~

34 ~~(5) Review the adequacy and accuracy of the pure premium rate~~
35 ~~as recommended by the Workers' Compensation Insurance Bureau~~
36 ~~and the pure premium rate adopted by the Insurance Commissioner.~~

37 ~~(b) Insurers shall submit to the contracting organization premium~~
38 ~~revenue, claims costs, and surplus levels in different timing~~
39 ~~aggregates as established by the contracting organization, but at~~
40 ~~least quarterly and annually. The contracting organization may~~

1 also request additional materials when appropriate. The contracting
2 organization and the commission shall maintain strict
3 confidentiality of the data. An insurer that fails to comply with the
4 reporting requirements of this subdivision is subject to Section
5 11754 of the Insurance Code.

6 (e) The administrative director shall submit to the Governor,
7 the Insurance Commissioner, and the President pro Tempore of
8 the Senate, the Speaker of the Assembly, and the chairs of the
9 appropriate policy committees of the Legislature, a progress report
10 on the study on January 1, 2005, and July 1, 2005, and the final
11 study on or before January 1, 2006. The Governor and the
12 Insurance Commissioner shall review the results of the study and
13 make recommendations as to the appropriateness of regulating
14 insurance rates. If, after reviewing the study, the Governor and the
15 Insurance Commissioner determine that the rates do not
16 appropriately reflect the savings and the timing of the savings
17 associated with the 2003 and 2004 reforms, the Governor and the
18 Insurance Commissioner may submit proposals to the Legislature.
19 The proposals shall take into consideration how rates should be
20 regulated, and by whom. In no event shall the proposals unfairly
21 penalize insurers that have properly reflected the 2003 and 2004
22 reforms in their rates, or can verify that they have not received any
23 cost savings as a result of the reforms.

24 (d) The cost of the study shall be borne by the insurers up to
25 one million dollars (\$1,000,000). The cost of the study shall be
26 allocated to an insurer based on the insurer's proportionate share
27 of the market.